

FILED

JUN - 2 2006

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARIO REYES, JR.,
Plaintiff,

No. C 05-1050 MHP (pr)

ORDER OF DISMISSAL

v.

T. VANIZ; et al.,
Defendants.

The complaint in this action is the same as the complaint filed by plaintiff in Reyes v. Doe, Case No. C 05-1002 MHP. Although the assignment of two case numbers at the outset may have resulted from the confusion caused by plaintiff sending in an in forma pauperis application in one envelope, a complaint in another envelope, and another complaint in a third envelope, it is inexplicable why he continued to press the two cases before two different judges rather than inform the court of the mistake.

The complaint is frivolous because it repeats claims made in Case No. C 05-1002 MHP. See Cato v. United States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988) (duplicative or repetitious litigation of virtually identical causes of action is subject to dismissal under 28 U.S.C. § 1915 as malicious). The court must dismiss a prisoner's civil action at any time if it determines that the action "is frivolous or malicious." 28 U.S.C. § 1915(e)(B)(ii). Accordingly, this action is DISMISSED with prejudice. The clerk shall close the file.

IT IS SO ORDERED.

DATED: 6/1/06


Marilyn Hall Patel
United States District Judge